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ple when his youngest child reached full age, with power in M., then to dispose of it as he saw fit; and if he did not dispose of it during his life, then his heirs could dispose of it absolutely; *Shimer* v. *Mann*, 99 Ind. 190. See *Schoonmaker* v. *Sheely*, 3 Denio 482; *Burchett* v. *Duadont*, 2 Vent. 311; *Darbison* v. *Beaumont*, 1 P. Wms. 229; *Jack* v. *Fetherson*, 9 Bligh. 237; *Poole* v. *Poole*, 3 B. & P. 620; *Teller* v. *Attwood*, 15 Q. B. 929; *Mills* v. *Seward*, 1 J. & H. 733; *Grimson* v. *Downing*, 4 Drew. 125; *Anderson* v. *Anderson*, 30 Beav. 209; *Moore* v. *Brooks*, 12 Gratt. 135; *Star Gloss Co.* v. *Morey*, 109 Mass. 570; *Scott* v. *Guernsey*, 48 N. Y. 106; *Urich's Appeal*, 86 Penn. St. 386; s. c. 27 Am. Rep. 707; *King* v. *Beck*, 15 Ohio 559; *Guthrie's Appeal*, 37 Penn. St. 9.

A devise of real estate by a testator to his son "during his natural life, and at his death to his children, if he have any, and if he have no children, or if there be no heirs of his body, then the real estate to his other heirs of his own blood, equally, and if he die leaving a wife, his said wife to have a life-estate in said real property, said estate to terminate at her death," was held, to vest in the son, unmarried and childless at the testator's death, only a life-estate: *Ridgway* v. *Lamphear*, 99 Ind. 251. See *Daniel* v. *Whartenby*, 17 Wall. 639; *Montgomery* v. *Montgomery*, 3 Jones & L. 46; *Webster* v. *Cooper*, 14 How. 488; *Powell* v. *Glenn*, 21 Ala. 458.

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LEGAL NOTES.

THE recent decision of the Supreme Court of the United States in the Express Company Cases[1] has been awaited with no little interest by the profession.

The three suits, presenting substantially the same questions, were heard together and argued by well known counsel. Each was brought by an express company against a railway company, to compel the latter to afford it the same express facilities it had formerly enjoyed under a contract then abrogated. The several Circuit Courts from which the cases were appealed, had each entered a decree in favor of the express companies, the material part of one of which, embodying the views entertained and the conclusions reached, is here given:

"(1) That the express business, as fully described and shown in the record, is a branch of the carrying trade, that has by the necessities of commerce and the usages of those engaged in transportation, become known and recognised so as to require the court to take notice of the same, as distinct from the ordinary transportation of the large mass of freight usually carried on steamboats and railroads.

"(2) That it has become the law and usage, and is one of the necessities of the express business, that the property confided to an express company for transportation should be kept while in transit in the immediate charge of the messenger or agent of such express company.

"(3) That to refuse permission to such messenger or agent to accompany such property on the steamboats or railroads on which it is to be carried, and to deny to him the right to the custody of the property while so carried, would be destructive of the express business, and of the

[1] *St. Louis, I. M. & S. Ry. Co.* v. *Southern Express Co.*; *Memphis & L. Rd. Co.*, as reorganized, v. *Same*; *Missouri, K. & T. Ry. Co.* v. *Dinsmore, President of the Adams Express Co., &c.*

rights which the public have to the use of such steamboats and railroads for the transportation of such property so under the control of such messengers or agents.

"(4) That the defendant, its officers, agents, and servants, have no right to open or inspect any of the packages or express matter which may be offered to it for transportation by the plaintiff's company, or to demand a knowledge of the contents thereof, nor to refuse transportation thereof unless such inspection be granted or such knowledge be afforded.

"(5) That it is the duty of the defendant to carry the express matter of the plaintiff's company, and the messengers or agents in charge thereof, at a just and reasonable rate of compensation, and that such rate of compensation is to be found and established as a unit, and is to include as well the transportation of such messengers or agents as of the express matter in their custody and under their control.

"(7) That it is the duty of the defendant to afford to the plaintiff all express facilities, and to the same extent and upon the same trains that said defendant may accord to itself, or to any other company or corporation engaged in the conduct of an express business on the defendant's lines, and to afford the same facilities to the plaintiff on all its passenger trains.

"(8) That the plaintiff keep and render monthly a true account of the services performed for it by defendant, and pay therefor at the rate hereinafter specified, on or before the ——— of each month, after the date hereof, for the business of the month preceding; and that the defendant has no right to require prepayment for said express facilities, or payment therefor at the end of every train, or in any other manner than as is herein provided; and that plaintiff execute and deliver to the defendant a bond in the sum of twenty-five thousand dollars, conditioned well and faithfully to make such payments as are herein provided, and with surety to be approved by a judge of the court.

The Supreme Court, in the opinion delivered by Chief Justice WAITE, after reviewing the growth of the express business and recognising the fact that it could not be destroyed without interfering materially with business and the conveniences of social life, thus continues: "In this connection it is to be kept in mind that neither of the railroad companies involved in these suits is attempting to deprive the general public of the advantages of an express business over its road. The controversy, in each case, is not with the public, but with a single express company. And the real question is not whether the railroad companies are authorized by law to do an express business themselves; nor whether they must carry express matter for the public on their passenger trains, in the immediate charge of some person specially appointed for that purpose; nor whether they shall carry express freights for express companies as they carry like freights for the general public—but whether it is their duty to furnish the Adams Company or the Southern Company facilities for doing an express business upon their roads, the same in all respects as those they provide for themselves or afford to any other express company."

Admitting as true the averments in the bill, that "no railroad company in the United States * * * has ever refused to transport express matter for the public, upon the application of some express company, of some form of legal constitution. Every railway company * * * has recognised the right of the public to demand transportation by the railway facilities, which the public has permitted to be created, of that class of

matter which is known as express matter," the court says it is not there averred nor shown by the testimony that any railroad in the United States has ever held itself out as a common carrier of express companies, *i. e.*, a common carrier of common carriers. Much stress is laid on the inconveniences that would follow, were the railroad companies obliged to furnish express facilities to all applying for them, its interference with passenger business, etc., and the conclusion is reached, that "The railroad company performs its whole duty to the public at large and to each individual when it affords the public all reasonable express accommodations. If this is done, the railroad company owes no duty to the public as to the particular agencies it shall select for that purpose. The public require the carriage, but the company may choose its own appropriate means of carriage, always provided they are such as to insure reasonable promptness and security."

Failing to find any evidence of a usage to that effect, in the absence of any statute, the court declares that it is not the duty of railroad companies to furnish express facilities to all alike who demand them; and as no duty was imposed by contract upon the defendants to furnish the complainants with such, the court declines making a judicial regulation of their business.

The opinion is of value because of the decision reached, rather than for the discussion of the subject, which has been more elaborately treated in many other cases, a collection of which will be found in a note to *Southern Ex. Co.* v. *Nashville Ry. Co.*, 20 Am. L. Reg. 602.

The practical solution of the problem is not free from difficulty. The growing feeling against monopolies of every sort, will no doubt lead to attempts on the part of the various state legislatures to impose on the railway companies, the duty which it has just been decided is not theirs by the common law, and the complicated provisions, inseparable from such legislation, will no doubt give rise to many constitutional questions, akin to those we may expect from the Railroad Commission Acts.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF UNITED STATES.[1]

SUPREME COURT OF GEORGIA.[2]

SUPREME COURT OF INDIANA.[3]

SUPREME COURT OF ILLINOIS.[4]

COURT OF ERRORS AND APPEALS OF MARYLAND.[5]

AGENT. See *Bank*.

Authority to Warrant—Presumption.—An agent, upon whom general authority to sell, is conferred, will be presumed to have authority to warrant, unless the contrary appears: *Talmage* v. *Bierhouse*, 103 Ind.

[1] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term, 1885. The cases will probably appear in 116 U. S. Rep.

[2] From J. H. Lumpkin, Esq., Reporter; to appear in 73 or 74 Ga. Rep.

[3] From John W. Kern, Esq., Reporter; to appear in 103 Ind. Rep.

[4] From Hon. N. L. Freeman, Reporter; to appear in 114 Ill. Rep.

[5] From J. Shaaf Stockett, Esq., Reporter; to appear in 64 Md. Rep.